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3 Administrative Office of the Courts
4 Supreme Court of Arizona
5 1501 W. Washington St.
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7 **IN THE SUPREME COURT**

8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-19-0010

10 **PETITION TO AMEND RULE 37,**
11 **RULES OF THE SUPREME**
12 **COURT OF ARIZONA**

Proposed Rule Change Comment by
Certification and Licensing Division
Staff

13 The Certification and Licensing Division provides the administrative support
14 to the Committee on Character and Fitness and the Committee on Examinations.
15 The Division “staffs” each Committee. In this role, the Division would like to
16 provide the Supreme Court with the following comments.

17 Unlike many of the other regulatory programs within the Supreme Court or
18 the executive branch, the admission records of applicants to the State Bar are treated
19 as confidential with few exceptions. *See* Rules of the Supreme Court, Rule 37.
20 Generally, the confidentiality provisions are intended to encourage applicants to
fully and frankly provide information to the two Committees.

As to issue of score releases, presently exam results are released to law schools
in two situations: publicly a list is posted naming each student that passes the exam

1 and each law school is notified of whether that school's graduates pass, fail or
2 withdraw from the examination.

3 In determining whether Rule 37 should be amended to allow the law schools
4 to have personally identifying information/grades of former students, the Division
5 would like to highlight the following issues:

6 1. As proposed, the amended Rule would require the release of the
7 information. The petition provides that the Division "shall" release the information.
8 All other provisions of Rule 37 providing for release of applicant information are
9 prefaced with the word "may". If adopted, the word "shall" should be changed to
10 "may". Thereby allowing the Division to manage future unanticipated
11 circumstances under the supervision of the Supreme Court and the Director of the
12 Administrative Office of the Courts.

13 2. The petition as drafted requires the release of information to all law schools
14 not only Arizona law schools. If adopted the language should be modified to require
15 a law school to request the information as opposed to requiring automatic release to
16 law schools located throughout the 50 states.

17 3. The petition allows the information to be used for two purposes: scholarly
18 research and improvement of the law school's programs. While there is a
19 confidentiality provision, the petition does not address the release of information to
20 third parties for either of these purposes, nor does it address the nature, purpose or

1 dissemination of the scholarly research. Further, scholarly research is not required
2 to be tied to the stated purpose of the petition - to the improvement of the law
3 school's programs.

4 4. As the petition recognizes, all of the records the law schools are seeking
5 are records of former not current students. Privacy concerns of former students need
6 to be given appropriate weight in determining whether to allow the release and
7 whether any waiver requirement is an opt in or opt out requirement.

8 5. Finally, should the rule change be adopted, staff anticipate some
9 administrative impact may be incurred as it relates to any proposed online waiver
10 provision. Staff respectfully asks the Court to delay the implementation date until
11 after the February 2020 bar exam for appropriate time to assess the changes needed
12 to implement modifications to the online application system or another method of
13 capturing the requisite information.

14 RESPECTFULLY SUBMITTED this 30th day of April, 2019.

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